Before The
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	WC Docket No. 12-353
Request to Refresh Record and Amend	)	
The Commission's Copper	)	RM-11358
Retirement Rules	)	

COMMENTS OF COMPTEL

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COMPTEL respectfully submits these comments, pursuant to the Federal Communications Commission's ("Commission") Public Notice (DA 13-147)("Notice")[1] in support of the request of Mpower Communications Corp., and U.S. TelePacific Corp. (together, "TelePacific"); ACN Communications Services, Inc.; Level 3 Communications, LLC; TDS Metrocom, LLC and Telecommunications for the Deaf and Hard of Hearing, Inc. ("TDI") (collectively "*TelePacific et al Request*") for the Commission "to take expedited action to update its copper retirement rules to preserve and promote affordable broadband over copper."[2]

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[1] FCC Public Notice, "Wireline Competition Bureau Seeks Comment on Request to Refresh Record and Amend the Commission's Copper Retirement Rules," DA 13-147, WC Docket No. 12-353; RM-11358 (rel. Feb. 4, 2013).

[2] Letter of Joshua M. Bobeck to Marlene H. Dortch, RM-11358 et al, p. 1 (filed Jan. 25, 2013)("TelePacific et al Request")

Introduction and Summary

Various requests seeking revision of the Commission's copper retirement rules have been pending at the Commission for a number of years.[3] The record is replete with evidence regarding the technological advancements that have transformed copper into the nation's most ubiquitous broadband infrastructure and, importantly, a source of affordable broadband to consumers. The record shows that the consumers most impacted by the elimination of copper are small and medium size businesses. Collectively, the record amply demonstrates that the cost of providing competitive broadband services to small and medium size businesses could increase dramatically if the Commission does not revisit its rules.

The ILECs have not demonstrated that there is significant burden to making copper available. Moreover, since the ILEC is permitted to retire copper without making a functionally and equivalently priced alternative available to competitors, under the current rules, the ILEC is, in effect, permitted to escape its unbundling requirements without having to meet the statutory standard for forbearance.

The time for the Commission to act to protect competition and consumers choice of affordable broadband services is now.

Copper is a Ubiquitous Broadband Infrastructure

Copper loops are not obsolete, but provide a basic transmission platform that can, with electronic modification, become broadband facilities. Copper can be used to support *either* TDM or packet-based services because, as a transmission medium, it is format agnostic.

[3] *See* BridgeCom International, Inc. *et al*, Petition for Rulemaking and Clarification, RM-11358 (Jan. 18, 2007)("BridgeCom *et al* Petition"); XO Communications, LLC *et al*, Petition for Rulemaking, RM-11358 (Jan. 18, 2007)("XO *et al* Petition"); Letter of Karen Reidy, COMPTEL, to Marlene Dortch,RM-11358 (Dec. 7, 2009).

The record is filled with evidence that copper facilities are a major contributor toward broadband expansion.

* Ethernet over Copper is a significant and widely deployed next generation technology that is critical to the Commission's National Broadband Plan and the migration from legacy to Ethernet/IP services. In particular, … ***Ethernet over Copper is a means to deliver IP, and not a legacy TDM technology***.[4]

* Because Ethernet over Copper can fill in the gaps for 69% of business locations, having access to copper loops is critical for accelerating the adoption of IP-based services. Ethernet over Copper is the way to bring IP to the mass market.[5]

* Ethernet over Copper is a viable technology for delivering bandwidths from 10Mb/s to over 100Mb/s. There are two approaches used: 1) symmetric G.SHDSL and 2) asymmetric DSL.[6]

* Using VDSL2 technology and two-pair bonded loops, broadband download speeds of 80 Mbps can be provided on loop lengths up to 2500 feet. Alternatively, using ADSL2+ technology and two-pair bonded loops, the subscriber can get download speeds of 25 Mbps on loop lengths of up to 10,000 feet. And where there are additional loops (which may be the case for some residences, or for broadband service to businesses or to remote terminals), multi-pair bonding can be used to provide hundreds of Mbps download speeds.[7]

* Using vectoring, DSL download speeds of 100 Mbps can be provided on loops of up to 1000 feet over a single copper loop pair, or that same speed can be provided at up to 2500 feet with two-pair bonding.[8]

* Solutions based on [ADTRAN's new product] ActivReach allow service providers to deliver 100 Mbps of Ethernet services at three times the

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[4] Letter of Jeff Reedy, Co-founder and Chief Strategy Officer, Overture Networks, Inc., to Marlene Dortch, RM-11358 et al, p. 1 (filed Dec. 7, 2012).

[5] Id. at 2.

[6] Id.

[7] Letter of Stephen L. Goodman, Counsel for ADTRAN, Inc., to Marlene Dortch, RM-11358 et al, pp. 1-2 (filed Oct. 12, 2012)("ADTRAN Ex Parte").

[8] Id. at 2.

distance over legacy voice grade wiring in older and historic buildings. The majority of these technology innovations are focused on copper distribution where the economics for fiber optics and other technologies are the most challenging.[9]

* With EoC, TelePacific has used bare copper loops to bring broadband speeds of 10 to 50 Mbps to its small and medium sized business customers. For example, TelePacific was able to switch a school in Los Angeles from two T-1s providing 3 Mbps to EoC using 8 copper pairs that now offer 35 Mbps. Importantly, the price increase for this change was minimal.[10]

* Alpheus Communications…provides, among its other services, Ethernet broadband services that we create by installing the appropriate electronics on copper loop facilities that we acquire from the incumbent local exchange carrier.[11]

* Eventis Telecom, Inc. provides Ethernet broadband services to customers in Minnesota and Iowa. These services are created using copper loop facilities that we acquire from CenturyLink.[12]

* TC3 provides, among its other services, Ethernet broadband service that we create by installing the appropriate electronics on copper loop facilities that we acquire from the incumbent local exchange carrier.[13]

* TelQuality Commmunications, Inc. provides, among its other services, Ethernet broadband services that we create by installing the appropriate electronics on copper loop facilities that we acquire from the incumbent local exchange carrier.[14]

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[9] Id at 2-3.

[10] Letter of Tamar E. Finn, Counsel for U.S. TelePacific, Corp., to Marlene Dortch, RM-11358 et al, p. 1 (filed Oct. 15, 2012)("TelePacific Oct. 15 Ex Parte").

[11] Letter of Karen Reidy, COMTPEL, to Marlene Dortch, RM-11358 et al (filed Oct. 1, 2102), *attached statement of* Patricia M. Hogue, Sr. Vice President Reg. Affairs, Alpheus Communications, LLC ("Alpheus Statement").

[12] Id., *attached statement of* William D. VanderSluis, Director Reg. Affairs, Enventis.

[13] Id. *attached statement of* Joseph P. Mattausch, President, TC3 telecom.

[14] Id. *attached statement of* Tim Koxlien, CEO, TeleQuality Communications, Inc.

As the above makes clear, there is no dispute that copper can now play (and is playing) an important role in the nation's broadband future. What is needed is for the Commission's rules to recognize this fact.

The Commission's Current Last Mile Access Policies Could Substantially Harm Small to Medium Size Businesses

Competitors provide small and medium size businesses with innovative and affordable broadband services through the use of copper based solutions. As the Small Business Administration explained: "Legacy copper networks are a vital piece of our national infrastructure, and consumers overwhelmingly rely on those last-mile copper networks to receive high-speed broadband services."[15] In particular, COMPTEL members have been offering small and medium size businesses (that might otherwise be left with more expensive DS1s) Ethernet over Copper ("EoC") solutions that grow with their businesses. Competitive carriers serve a vast array of industries in this manner, including financial institutions, non-profits, retail customers, educational institutions, insurance companies, health care providers, publishing and consulting firms.

Growth in the economy depends on growth in these industries and any rise in communications cost could diminish their ability to invest and create jobs. One analyst report predicts: "Booming small and mid-sized businesses will … increase [IT] spending from $95.8 billion (in 2011) to $122 billion (in 2016), suggesting an increased investment in this highest growth sector in the current economic climate."[16] The Commission should not stifle these

[15] Comments of the Office of Advocacy, U.S. Small Business Administration, Promoting Interoperability in the 700 MHz Commercial Spectrum, RM-11358 et al, p. 6, filed May 24, 2012.

[16] http://www.marketresearch.com/Compass-Intelligence-v3311/Business-Telecom-Expenditures-Size-7095415/

companies with policies that might force them to lose existing broadband services or pay higher prices for them.

The record demonstrates substantial cost savings are possible through Ethernet over Copper solutions (EoC):

* EoC burst onto the scene at the right time for small-medium businesses that cannot afford to purchase budget-busting fiber connections but need something more than a T-1 – or even a VDSL line – to feed their increasing data appetite… [It is a "shame" when copper is removed or the copper plant is no longer maintained] because in this economy where businesses are looking to expand without paying the price to do so, it seems that Ethernet-over-copper is … a capability that's out there to continue to provide quality services at lower cost for businesses, allowing them to reduce their telecom expense and hopefully grow their businesses accordingly.[17]

* Offering speeds that range from as low as 2 Mbps with the theoretical ability to climb to 50and even 100 Mbps, EoC is putting higher speed IP-based Ethernet services in the hands of users that may not want or cannot afford the cost of an additional 1.5 Mbps T1 line, but want higher speeds.[18]

* On average, the underlying cost of provisioning EoC using UNE loops is approximately one-tenth of that similar bandwidth provided over fiber.[19]

* EoC has the potential to bring affordable broadband to small businesses, especially community and anchor institutions such as schools, libraries, and rural health care providers, who cannot afford fiber-based broadband.[20]

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[17] "Finding New Gold in Copper, FierceTecom, pp. 5-6, September 2012. *attachment to* Letter of Karen Reidy, COMTPEL, to Marlene Dortch, RM-11358 (filed Oct. 1, 2102) and available at: servicecenter.fiercemarkets.com/files/leadgen/final_copper_networks.pdf"

[18] Id. at 2.

[19] *TelePacific Oct. 15 Ex Parte* at 1.

[20] Id.

* The majority of these technology innovations are focused on copper distribution where the economics for fiber optics and other technologies are the most challenging.[21]

* [N]early every business, large or small, is already served by copper plant facilities that can be used right away to provide cost-effective broadband services.[22]

* TelePacific survey of nine CLECs in California shows that they have installed EoC capability in 343 California wire centers, giving the majority of small and medium sized businesses served by those wire centers the ability to purchase EoC based broadband service today. Texaltel undertook a similar study that shows six CLECs provide EoC broadband options to more than 400,000 business customers in 130 wire centers in Texas.[23]

* [Broadview and MegaPath] alone provide over eighty thousand small and medium size businesses with innovative and affordable broadband services, often through the use of copper based solutions…. if copper facilities were to be broadly retired – with no functionally and similarly priced alternative wholesale product available - the cost of providing broadband services to these small and medium size business customers could increase dramatically (could increase by 10 to 40 times).[24]

* With EoC, TelePacific has used bare copper loops to bring broadband speeds of 10 to 50 Mbps to its small and medium sized business customers.[25]

* Providing broadband over copper using Ethernet technology directly helps small to medium size businesses…[For example, Alpheus's EOC solution allowed one of its customers to] meet the total operational and budgetary needs of the company including access to high speed broadband. This is just one of the many examples of how EoC empowers small to medium

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[21] *Adtran Ex Parte* at 3.

[22] Letter of Regina M. Keeney, Counsel for XO, to Marlene Dortch, RM-11358 et al, p. 3 (filed Mar. 4, 2010).

[23] *TelePacific et al Request* at 4.

[24] Letter of Karen Reidy to Marlene Dortch, RM-11358 et al, pp. 1-2 (Feb. 25, 2013)("CLEC Feb. 25 Ex Parte").

[25] *TelePacific Oct. 15 Ex Parte* at 2.

businesses with choices for high speed broadband other than fiber which is not normally deployed to small business locations…[26]

* Copper retirement …means…: Elimination of many current broadband offerings to customers from CLECs… [and] reduces competitive alternatives and increases prices for customers.[27]

* Copper retirement … increases Costs of Broadband Services to Customers…. increases NRC Costs to Customer of Broadband Services …[and] reduces "Ubiquitous" availability of Cost Effective Broadband[28]

* As business customers increasingly turn to Ethernet-based communications services to link their Ethernet local area networks ("LANs"), CLECs have been responding by developing broadband offerings based on EoC, Ethernet over DS1, and Ethernet over BSDSL technologies. These services are being marketed to small and medium sized businesses, filling in a significant gap in the offerings of the ILECs and cable.[29]

* In addition to providing opportunities for small and medium size business to access the same robust and innovative IP applications available to fortune 500 companies, EoC allows large companies to leverage their network infrastructure to small remotely located offices, even those in more rural less densely populated areas as well as to individuals working remotely from home.[30]

Again, there is no dispute in the record: Ethernet over Copper is a critically important broadband alternative to the small and medium-sized business market.

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[26] Alpheus Statement at 2.

[27] Presentation of D. Craig Young, CEO and Chairman, MegaPath, at 5, *attached to CLEC Feb. 25 Ex Parte.*

[28] Presentation of Mike Robinson, President and CEO Broadview Networks at 5, *attached to CLEC Feb. 25 Ex Parte.*

[29] *TelePacific et al Request* at 10, *citing,* Covad Comments, WC Docket No. 09-223.

[30] Id. *citing* Fiercetelecom.com.

ILECs Have Failed to Demonstrate a Need to Remove Copper

The ILECs have not put forth any evidence of substantial harm, in terms of operational costs, to the ILEC by maintaining and making copper available to competitors. Indeed, Verizon's FiOS not only shares the same infrastructure that houses its copper facilities, its copper network sometimes *becomes* the supporting infrastructure (by lashing the fiber directly to the copper cable).[31] AT&T's U-verse network relies on a combination of fiber-to-the-node connected to copper subloops and VDSL technology.[32] As explained in a declaration before the California Public Utilities Commission, Verizon and AT&T's fiber and copper facilities are not stand-alone, separate networks.

> It is important to note that neither FiOS nor Uverse are complete stand-alone networks, physically separate in every way from the more traditional copper network. All of these facilities are likely to share common support structures, rights-of-way, conduit and, in some places, fiber cables (if not individual strands).[33]

The cost to maintain the copper facilities is recovered (alongside allowances for capital recovery and the other operating expenses) in the UNE prices that ILECs would receive for any copper leased to an entrant. Indeed, if anything, the evidence in the record shows that the

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[31] As Verizon has explained to the California Commission: Over the years pole lines and conduit systems have been constructed as a means to support copper cable placements. Placement of FTTP cables have taken advantage of the existing infrastructure, with fiber cables being placed alongside existing copper cables. It is not uncommon for fiber cables to be lashed to copper cables. Panel Declaration of Richard L. Fowler, John C. Mannix, Louis D. Minion, and Warren E. Thomas on Behalf of Verizon-California, Before the Public Utilities Commission of California, Rulemaking Regarding Whether to Adopt, Amend, or Repeal Regulations Governing the Retirement by Incumbent Local Exchange Carriers of Copper Loops and Related Facilities Used to Provide Telecommunications Services, 08-01-005 March 14, 2008, at ¶ 29.

[32] *See TelePacific et al Request* at 3.

[33] Declaration of Joseph Gillan on behalf of CalTel, California Public Utilities Commission Rulemaking 08-01-005, p. 3, n. 5, May 2008.

existing UNE rates likely *over*-compensate an ILEC for the cost to make copper available that it no longer requires for its own retail services.[34]

Moreover, at least in the case of Verizon, evidence suggests the ILEC will experience incremental operational costs to migrate customers off of their copper-based service. These costs may be offset when a customer upgrades to a more expensive service, but not if the customer remains a stand-alone POTs customer. Thus, the incentive to deploy fiber is the increased revenue from upgraded service, rather than any operational costs savings from retiring copper. In 2008, in California, Verizon was required (through discovery) to provide its internal documents analyzing the cost effectiveness of copper retirement. Although the documents are confidential, a Declaration that summarized the conclusions that could be drawn from the internal analysis is not. The conclusions in the declaration show that there is a substantial operating cost to migrate a customer off of the copper facilities:

* Verizon's internal analysis fundamentally concludes that shutting down its copper network would require a massive and costly forced-migration of customers, because its FiOS entertainment network will not voluntarily attract the majority of its base;[35] and

* With each successive analysis [by Verizon], it appears that the estimated operational cost savings from a copper shutdown decline.[36]

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[34] *See* Declaration of Joseph Gillan, Attachment A to Letter of Karen Reidy to Marlene Dortch, RM-11358 et al, ¶ 17, filed Dec. 7, 2009("[T]he existing UNE price would overprice recycled copper facilities because they are designed to reflect the cost to rebuild the network, not merely extend its useful life.") Moreover, if the ILEC was not fully compensated it certainly would be submitting revised cost studies to state commissions.

[35] Id. at ¶ 8.

[36] Id.

The review of Verizon's analyses disputed the theory that copper retirement is needed to promote fiber deployment by the ILEC:

> *Unfettered copper retirement is *not* needed to promote the deployment of fiber by the incumbent, but stable copper retirement polices *are* needed to foster the deployment of broadband networks by entrants.[37]
>
> * [T]he costs of a forced migration strategy *compete* within Verizon with FiOS deployment for capital and, as such, expending resources to migrate customers off copper could actually discourage additional broadband deployment elsewhere.[38]

<u>Continued Inaction to Revise Rules on Last Mile Access is Defacto Forbearance</u>

Last mile access facilities remain bottlenecks in ILEC networks and, as a result, must remain available to requesting telecommunications carriers at cost-based rates to facilitate competition in the provision of broadband services. The large ILECs still have the advantages of incumbency to achieve a cost structure that no entrant could achieve. As the Commission has recognized, "as new entrants, competitive LECs do not enjoy a large guaranteed subscriber base that would provide a predictable source of funding to offset their local loop deployment costs."[39]

The Commission has confirmed the importance of last mile access pursuant to Section 251 of the Act to competition. Even in those markets that the ILECs claimed to be *most* competitive, the Commission found that "reasonably efficient competitors face barriers to entry

[37] Id. at ¶ 8.

[38] Id. at ¶ 18.

[39] *In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* CC Docket No. 01-338 *et al*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36, 18 FCC Rcd 16978, ¶237 (2003).

that are likely to make entry into these markets uneconomic without access to [UNE loops]."[40] The Commission has also found that section 251(c)(3) UNE regulations are necessary to ensure that the ILEC's charges, practices, classifications, or regulations are just and reasonable, and are not unjustly or unreasonably discriminatory.[41]

The Commission need only look to the experience in Omaha to understand the impact lack of access to UNEs will have on competition. As the Commission acknowledged, the record there indicated that the only competitor of significant size (other than Cox) cited by the Commission in the *Qwest Omaha Forbearance Order*, McLeodUSA, removed most of its employees from the Omaha marketplace, limited its operations primarily to serving its existing customer base, and ceased sales of residential and nearly all business services in Omaha in the wake of the Commission grant of forbearance to Qwest in that region.[42] The Commission also noted that Integra, which had been contemplating entry into the Omaha market, abandoned its plans to do so after the release of the Order.[43] In other words, eliminating last mile access also curtailed competition.

Yet, while the Commission has recognized the critical nature of last mile access, the Commission's rules do not protect it as mandated by the Act. Because an ILEC can retire its copper loops, without any requirement to provide a functionally and equivalently priced

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[40] *See e.g.*, Memorandum Opinion and Order, *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, FCC 10-113, ¶ 93 (2010)(Qwest UNE Forbearance Order).

[41] *See e.g., Qwest UNE Forbearance Order* at ¶ 95.

[42] Id. at ¶ 34.

[43] Id.

alternative,[44] the impact of copper retirement is the same as a grant of forbearance to the ILEC of its obligation to provide unbundled loops pursuant to Section 251(c), <u>which the Commission could not justify granting even in the most competitive markets</u>**.** And, copper retirement will have an impact across the entire county, not merely in those markets that are the "most" competitive.

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[44] In overbuild situations, the Commission gave the incumbent LECs the option to "retire" the copper loop. 47 CFR § 51.319(a)(3)(iv). Additionally, the rules allow the ILEC to deny access to any functionally and similarly priced alternative wholesale product. For one, the Commission significantly altered critical aspects of the unbundling legislation adopted by Congress in 1996. Even in areas with "impairment" is found the Commission has relieved incumbent LECs from the Section 251 obligation to offer fiber to the curb ("FTTC") and fiber to the home ("FTTH") loops on an unbundled basis (with the limited exception of a voice grade capacity in overbuild situations and high capacity TDM offerings such as DS1 and DS3s) and relieved incumbent LECs from the Section 251 obligation to offer the packetized functionality of hybrid loops on an unbundled basis. *In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, CC Docket No. 01-338, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, 18 FCC Rcd 16978 (2003)("Triennial Review Order"); *In the Matter of Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers,* CC Docket No. 01-338, Order on Reconsideration, 19 FCC Rcd 20293 (2004). Second, the Commission granted forbearance from enforcing the RBOCs' 271 obligations to offer certain broadband elements on an unbundled basis. *Petition for Forbearance of the Verizon Telephone Companies Pursuant to 47 U.S.C. §160(c); SBC Communications, Inc.'s Petition for Forbearance Under 47 U.S.C. §160(c); Qwest Communications International Inc Petition for Forbearance under 47 U.S.C. §160(c); BellSouth Telecommunications, Inc. Petition for Forbearance Under 47 U.S.C. §160(c),* WC Docket No. 01-338, Memorandum Opinion and Order, 19 FCC Rcd 21496 (2004). Third, failed to act on a Verizon request for forbearance from the entirety of Title II and the *Computer Inquiry* requirements to its broadband services, resulting in a "deemed grant" of its request for relief. FCC News Release, *Verizon Telephone Companies Petition for Forbearance From Title II and Computer Inquiry Rules With Respect To Their Broadband Services Is Granted By Operation of Law*, WC Docket No. 04-440 (rel. Mar. 20, 2006). And subsequently, the Commission significantly relieved AT&T, Qwest and some other large incumbent LECs from dominant carrier and *Computer Inquiry* regulation of their non-TDM based packet-switched broadband services and non-TDM based optical broadband services. *E.g., Petition of AT&T, Inc. for Forbearance under 47 U.S.C. §160(c) from Title II and Computer Inquiry Rules With Respect to Its Broadband Services*, WC Docket No. 06-125, Memorandum Opinion and Order, 22 FCC Rcd 18705 (2007); *Qwest Petition for Forbearance Under 47 U.S.C. §160(c) from Title II and Computer Inquiry Rules With Respect to Its Broadband Services*, WC Docket No. 06-125, Memorandum Opinion and Order, FCC 08-168 (rel. Aug. 5, 2008).

Further Delay is Unwarranted

The Commission has been given the extraordinary task of encouraging competition, promoting advanced services, finding the most effective and efficient means of ensuring affordable broadband service, and maximizing the utilization of broadband infrastructure. Unfortunately, as the *TelePacific et al Request* has explained, and the record demonstrates, the Commission's existing rules with regard to last mile access fail to achieve these objectives.

COMPTEL has repeatedly emphasized that last mile access facilities to customers remain bottlenecks in the incumbent local exchange carriers' networks and, as a result, these facilities must remain available to requesting telecommunications carriers at cost-based rates. COMPTEL and individual competitors have proposed several means of ensuring that fiber and cooper loop facilities are available to competitors on a going-forward basis. In December 2009, COMPTEL asked the Commission to adopt simple rules that would realize the full potential of copper as a broadband facility while appropriately compensating the ILEC. Over the past three years, COMPTEL and other parties have constantly shown the Commission the harm to consumers if the Commission does not revisit its rules.

Inaction is not neutral – with every day the Commission delays action, the nation's most ubiquitous broadband infrastructure shrinks.

Conclusion

Competition spurs investment and innovation. Because the Commission rules provide no alternative to competitors when the ILEC retires its copper, the ILEC is allowed to escape their unbundling obligations under the Act through copper retirement without a finding by the Commission that such relief is in the public interest. The Commission should revise its rules to promote competition, maximum utilization of the broadband network, and affordable broadband service to consumers, including small and medium size businesses.

Respectfully submitted,

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